IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

OZETTA MITCHELL, Conservator
of the Estate of ERIC MITCHELL
Plaintiff

V. NO. 2:97CV163-B-B

TUNICA COUNTY, MISSISSIPPI; TUNICA COUNTY SHERIFF'S DEPARTMENT; SHERIFF JOHN PICKETT, III, Individually and in his Official Capacity as Sheriff of Tunica County, Mississippi; DEPUTY LERON WEEKS, Individually and as an Employee of Tunica County, Mississippi
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for summary judgment on the grounds of qualified immunity.[1] Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

At 4:00 a.m. on June 30, 1996, the plaintiff ran a stop sign while driving on Highway 61 in Tunica County, Mississippi. Deputy Weeks of the Tunica County Sheriff's Department turned on his blue lights and pulled the plaintiff's vehicle over. As Deputy Weeks stepped out of his patrol car, the plaintiff pulled back onto the road and sped away. A chase ensued at 70-80 m.p.h. Approximately three miles from where the chase began, the plaintiff's vehicle missed a turn and ran off the road into a soybean field. The plaintiff's car was heavily damaged. When

[1] The defendants motion for summary judgment was not limited to the issue of qualified immunity. However, by order dated May 29, 1998, the court held in abeyance all summary judgment issues with the exception of qualified immunity. Therefore, qualified immunity is the only issue the court is addressing at this time.

Deputy Weeks pulled up at the edge of the bean field, he shined a light at the plaintiff's vehicle. Deputy Weeks saw no one in the vehicle and saw no one running away. Deputy Weeks did hear someone mumbling in the direction of the wrecked vehicle. Other officers arrived on the scene and a search of the bean field ensued. Although the beans were only eighteen inches tall and the plaintiff was lying within fifty feet of the vehicle, the officers did not find him. A tow truck was summoned to remove the vehicle. The officers left the scene of the accident at approximately 5:30 a.m. Official sunrise for Tunica, Mississippi, on that date was 5:51 a.m. The plaintiff was found at approximately 6:25 a.m. by a passing motorist who saw the plaintiff lying within fifty feet of the road. The plaintiff's injuries were apparently severe and the plaintiff remained in a coma at the time the plaintiff's complaint was filed.

LAW

The defendants Weeks and Pickett have asserted the defense of qualified immunity for all claims asserted against them in their individual capacity. Qualified immunity shields government officials from civil liability if their conduct does not violate a clearly established constitutional right of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 410 (1982). Qualified immunity is not just immunity from judgment, but rather is immunity from all aspects of suit. Jacquez v. Procunier, 801 F.2d 789, 791 (5th Cir. 1986). The qualified immunity determination is a two-step analysis. Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1405-1406 (5th Cir. 1996). The court must first determine whether the plaintiffs have alleged a violation of a constitutional right. Id. If so, the court must then decide whether the constitutional right allegedly violated was clearly established at the time of the events in question. Id. In considering whether the plaintiffs have alleged a violation of a constitutional right, the court must be mindful of the heightened pleading requirement that plaintiffs are required to meet in order to overcome the defense of qualified immunity. See Schultea v. Wood, 47 F.3d 1427 (5th Cir. 1995); Elliott v. Perez, 751 F.2d 1472

(5th Cir. 1985). To avoid dismissal, the plaintiffs must allege specific facts which, if true, would defeat the qualified immunity defense. Wicks v. Mississippi State Employment Servs., 41 F.3d 991 (5th Cir. 1995), cert. denied, 515 U.S. 1131, 132 L. Ed. 2d 809 (1995).

The plaintiff initially asserted that his constitutional rights were violated by both the nature of the pursuit as well as the failure to summon medical assistance after the wreck. Since the Supreme Court's decision in County of Sacramento v. Lewis,[2] rendered on May 26, 1998, the plaintiff has conceded that he does not have a viable claim arising out of the pursuit, leaving only the issue of the failure to summon medical assistance.

The defendants assert that they were under no duty to provide medical care as the plaintiff was never in custody. The defendants' duty under the Fourteenth Amendment to ensure that the plaintiff receives medical attention for obvious and life threatening injuries does not arise until the plaintiff is in the custody of the defendants. See Revere v. Massachusetts General Hosp., 463 U.S. 239, 244, 77 L. Ed. 2d 605, 611 (1983); Reed v. Gardner, 986 F.2d 1122, 1124-1125 (7th Cir. 1993), cert. denied, 510 U.S. 947, (1993); see also DeShaney v. Winnebago County Dept. of Soc. Servs., 489 U.S. 189, 199-200, 103 L. Ed. 2d 249, 261-262 (1989). The plaintiff contends that the accident was of such severity that it should have been obvious to a reasonable officer that the occupant of the vehicle was in need of medical attention. The plaintiff asserts that the only reason that he was not in custody was the defendants' own failure to conduct a thorough and organized search. The court finds the plaintiff's arguments unpersuasive. The plaintiff has failed to show that the defendants had any affirmative duty to find and take into custody an individual who was attempting to flee from the police. It is highly ironic that until the moment of the wreck, the plaintiff was doing his best to avoid being taken into custody, yet now he claims that the sheriff's department was, in fact, negligent in failing to take him into custody.

The plaintiff further asserts that the state played a role in creating the danger and therefore

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[2] 140 L. Ed. 2d 1043 (1998).

had a duty to provide medical attention even absent a custodial relationship. However, the court finds that the plaintiff's reference to the state-created danger theory is merely an attempt to circumvent the Supreme Court's holding in Lewis. None of the cases cited by the plaintiff concerning the state-created danger theory bear even a remote resemblance to the factual scenario presented herein.

Finally, the plaintiff argues that defendant Pickett, as sheriff, had a duty to supervise defendant Weeks, but failed to do so as evidenced by the lack of a supervisor on duty at the time of the pursuit. The plaintiff contends that the pursuit policy in effect at the time clearly required a supervisor to monitor the pursuit, and that had a supervisor been on duty, the plaintiff may have been instructed to discontinue the high speed pursuit of a person whose only crime was to run a stop sign. The court finds no merit to the plaintiff's argument, as the plaintiff is again attempting to circumvent the ruling in Lewis by proposing an alternative theory of recovery on the issue of pursuit.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion for summary judgment on the issue of qualified immunity should be granted. An order will issue accordingly.

THIS, the ____ day of August, 1998.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE